

THE WORLD OF INTERNATIONAL ADOPTION



QUESTIONS NEEDING ANSWERS...

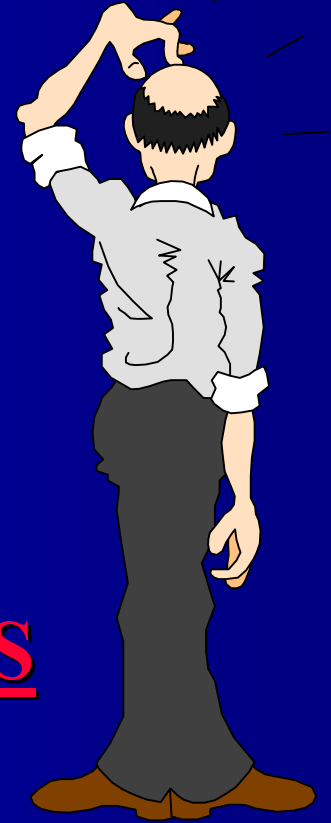
Who Is An ORPHAN?

Who Is NOT An ORPHAN?

How To Work With The DEFINITIONS
From This Material...

Where To Find The ANSWERS...

MISCELLANEOUS Issues...



ORPHANS ARE

INS

PRIORITY!



INS Officers MAY Feel...

Unsure

Intimidated

Overwhelmed

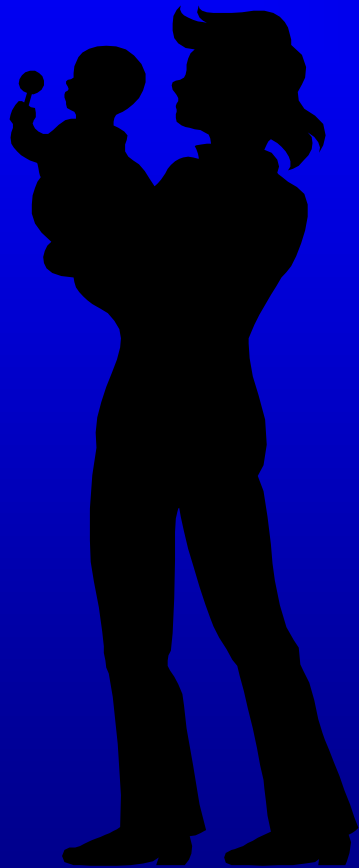
Pressured by
Public Opinion!

Unsure Where To
Get The Answers

Slandered On The
Internet



OBSERVATIONS



Parents WANT To Do The Right Thing.

Parents Are EMOTIONAL

Parents Are UNFAMILIAR With INS 1st Alien In Family.

Parents NEED To Talk FREQUENTLY With INS.

Susceptible To ERRONEOUS Information.

Some ADOPT 1st - ASK later.



WHAT IS OUR ROLE?

Be The EXPERT In International Adoptions.

Provide OUTREACH To Parents/Agencies.

Provide SOURCES of Accurate Information

ACCESSIBILITY To Answer Questions.

DEVOTE Time To Parents.

SENSITIVITY Balanced With Fraud

DETECTION.

PROFESSIONALISM...



IF YOU

Parents Adopt
INELIGIBLE Orphans.

DON'T!

Rely On UNOFFICIAL
Sources

DISTRUST INS.

Can Spend 100 Hours
Dealing With 1st
Scenario!



TODAY'S AGENDA



AGENDA...

ORPHAN

- Definition of Terms

Pertaining To **BOTH** Parents

Pertaining To **SOLE/SURVIVING** Parent

CHILD

- Definition of Terms

PARENT


- Definition of Terms



IMMIGRATION & NATIONALITY ACT

ORPHAN - SEC 101(b)(1)(F)(i)

**A Child Under The Age Of 16 At The Time A
Petition Is Filed On His Behalf...And Who Is An
Orphan Because Of the **Death Or Disappearance**
Of, **Abandonment Or Desertion** By, Or
Separation Or Loss From, Both Parents, Or For
Whom The **Sole Or Surviving Parent**, Is
Incapable Of Providing the Proper Care And
Has In Writing Irrevocably Released The Child
For Emigration And Adoption...**



SEC 101(b)(1)(F) (ii)

AMENDED DEC 7, 1999

Gave additional eligibility to a child,
under age of 18, at time petition is
filed

- who is the natural sibling of a
child described in the INA as
an { *orphan* }, OR { *adopted child* }



SEC 101(b)(1)(F)(ii) INA

NATURAL SIBLING OF A CHILD WHO IS ORPHAN or ADOPTED CHILD as DEFINED BY INA

ADOPTED ABROAD, OR COMING TO U.S.
FOR ADOPTION FOR SAME ADOPTIVE PARENT(S) OF THE SIBLING ORPHAN or ADOPTED CHILD,

EXCEPT THAT THE CHILD IS UNDER THE AGE OF 18 AT TIME PETITION FILED



LOOKING FOR ANSWERS?

How To Define
An Orphan...

How To Work
With The
Definitions...



ANATOMY OF ORPHAN DEFINITION

ORPHAN

ACTION BY BOTH PARENTS

SOLE OR SURVIVING PARENT

**ABANDONED BY
DESERTED BY
SEPARATED**

**DEATH
DISAPPEARED
LOSS FROM**



DEFINITION OF TERMS FOUND IN...

8 CFR 204.3(b)



ABANDONMENT BY BOTH PARENTS

8 CFR 204.3(b)

WILLFULLY
Forsaken ALL
Parental Rights.

No Longer
CONTROLS Destiny
Of Child.

UNCONDITIONAL
Surrender To
Orphanage or Similar
Institution/Authority

Does NOT Include
RELINQUISHMENT To
Adoptive Parents.

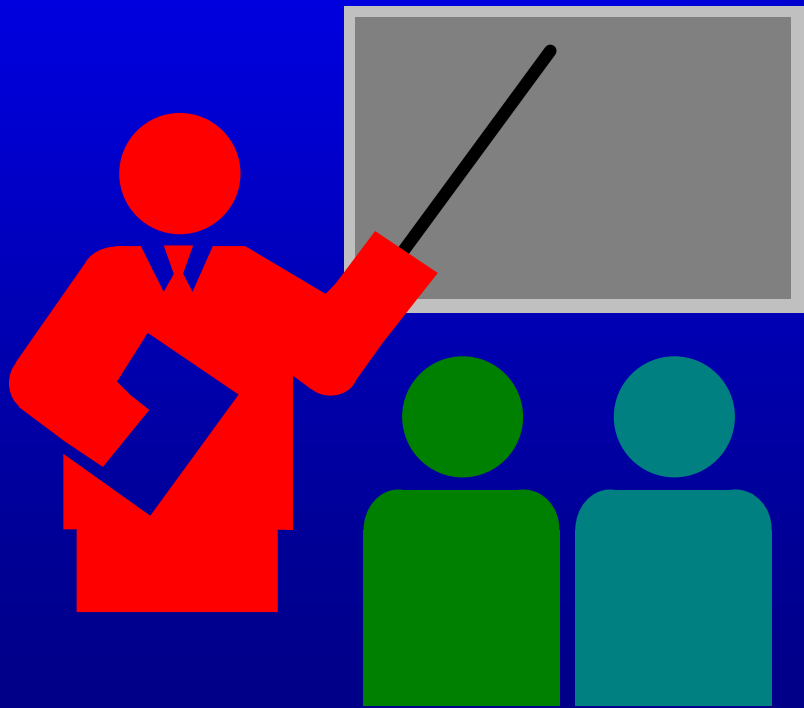
Does NOT Include
DELIBERATE Transfer
To Third Party For
Specific Adoption.

UNLESS... Third Party
Is: COMPETENT
AUTHORITY



COMPETENT AUTHORITY

Is A Critical Component Of The Following Terms:



ABANDONED BY:

DESERTION BY:

SEPARATED

FROM:

DISAPPEARED:

LOSS FROM:



COMPETENT AUTHORITY



8 CFR 204.3(b)



Court Or Governmental Agency Of A
FOREIGN-SENDING COUNTRY Having
Jurisdiction And Authority To Make Decisions
In Matters Of Child Welfare, Including
Adoption.

Can include entities designated by the
above to act in child welfare matters.



FOREIGN SENDING COUNTRY

8 CFR 204.3(b)

Country Of
Child's
Citizenship.

If NOT Residing
In Country Of
Citizenship,
Country Of
LAST Habitual
Residence.

EXCLUDES

Country Orphan
Travels To
Temporarily.

EXCLUDES

Country Travels
To For Adoption
Or Immigration.



DESERTED BY BOTH PARENTS

8 CFR 204.3(b)

Willfully FORSAKEN Child.

REFUSED To Carry Out
Parental Obligations.

Child Becomes A Ward Of A
COMPETENT AUTHORITY
As A Result Of These Actions.



SEPARATION FROM BOTH PARENTS

8 CFR 204.3(b)

Involuntary Severance Of Child By
COMPETENT AUTHORITY.

COMPETENT AUTHORITY Takes Over For
Good Cause: NEGLECT, ABUSE or
INCOMPETENCE Of Parent(s).

Parents Must Have Been PROPERLY Notified.

Severance Must Be Permanent/Unconditional.



DISAPPEARANCE BY BOTH PARENTS

8 CFR 204.3(b)

Unaccountably Missing.

Whereabouts Unknown.

No Reasonable Hope Of Reappearance.

Reasonable Effort To Locate Them Per

COMPETENT AUTHORITY In

Accordance With Law Of FOREIGN

SENDING COUNTRY.



LOSS FROM BOTH PARENTS

8 CFR 204.3(b)

INVOLUNTARY Severance Of Child
From Parents.

By Natural Disaster, Civil Unrest,
Calamitous Event.

Beyond Control Of Parents.

Verified By COMPETENT
AUTHORITY In Accordance With Law
Of FOREIGN SENDING COUNTRY.



SURVIVING PARENT

8 CFR 204.3(b)

One Parent **DEAD**

Surviving Parent Has **NOT**
Remarried. (Creates A Step-Parent
Relationship.)



DEFINITION OF ~~SOLE~~ PARENT 8CFR 204.3(b)

DEFINITION IN
REGULATIONS HAS NOT
BEEN CHANGED SINCE
AMENDMENTS TO
SEC. 101(b)(1), in 1995

Reference In Regulations To
Illegitimate NO LONGER Apply
BUT Have Not Yet Been Amended.



SOLE PARENT

Refers to Mother if:

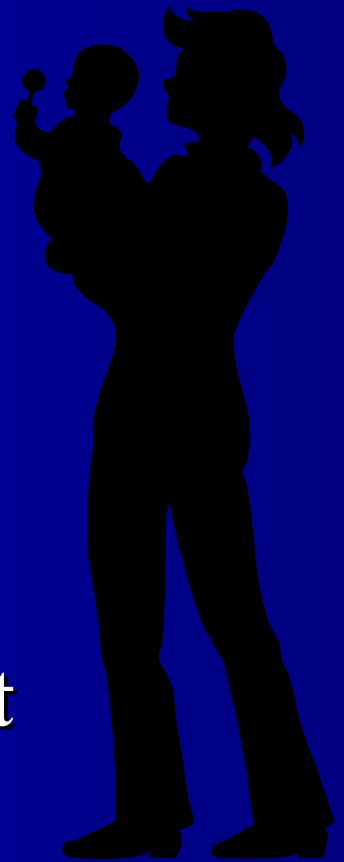
Child born out of wedlock

Child not legitimated under law

Child has not acquired another parent

Natural father

- **Disappeared, abandoned/ deserted child OR**
- **Irrevocably released, in writing, child for emigration and adoption**
- **Unknown**



SOLE OR SURVIVING PARENT

8 CFR 204.3(b)

- In order to qualify as an orphan, the sole or surviving parent must be “INCAPABLE OF PROVIDING PROPER CARE”.....



INCAPABLE OF PROVIDING **PROPER CARE**

8 CFR 204.3(b)

Sole or surviving parent is unable to provide for child's basic needs, consistent with the local standards of foreign sending country

Determination is *NOT* limited to economic or financial concerns:

- Medical or emotional difficulties**
- Long-term incarceration**



MORE ON...

**SOLE OR
SURVIVING
PARENT**



Irrevocable Release by Sole or Surviving Parent

**IF incapable of providing proper care,
MAY irrevocably release child for
emigration and adoption**

**ONLY CIRCUMSTANCE when a child
may be released by parent DIRECTLY to
adoptive parent**

**Release not valid unless done according to
law of foreign sending country... some
countries do not allow release for adoption
or emigration**



Sole or Surviving Parent's Release or Relinquishment

Must be written

**In language parent can read and sign or
if illiterate, was read to and understood**

Irrevocable without stipulations

**AGAIN: MAY SURRENDER
DIRECTLY TO PROSPECTIVE
ADOPTIVE PARENT(S) or FOR
SPECIFIC ADOPTION**



**IF CHILD FITS DEFINITION
OF ORPHAN:**



MUST DETERMINE WHETHER

**CHILD HAS BEEN ADOPTED
ABROAD**

OR

**IS COMING TO THE U.S. FOR
ADOPTION**

FULL AND FINAL ADOPTION ABROAD..

**Adoption in accordance with laws of
foreign sending country**

No conditions or limits

**Evidence that adoptive parent, (and if
married, also spouse), adopted and saw
child prior to or during adoption
proceeding**

OR



ADOPTION NOT FULL & FINAL

Adoption NOT considered full and final if parent (both parents if married) did not see child prior to or during adoption proceeding

Adoption NOT considered full and final if limited, conditional or “simple” in foreign country

Adoption NOT considered full and final if adopted by only one parent of married couple



CHILD COMING TO BE ADOPTED **or ADOPTION NOT FULL AND** **FINAL**

Requires evidence PAP or entity working in behalf of PAP , has custody of child according to law of foreign sending country AND

Evidence of irrevocable release for emigration and adoption by person/entity who had immediate previous legal control of child according to law of foreign sending country. NOTE: Custody does not always mean legal control



Adoption not Full and Final or Coming to U.S. for Adoption

Evidence of compliance with any pre-adoption requirements of the State of child's proposed residence

Any such requirements that cannot be complied with prior to orphans arrival in U.S. must be noted and explained



UNDERSTANDING

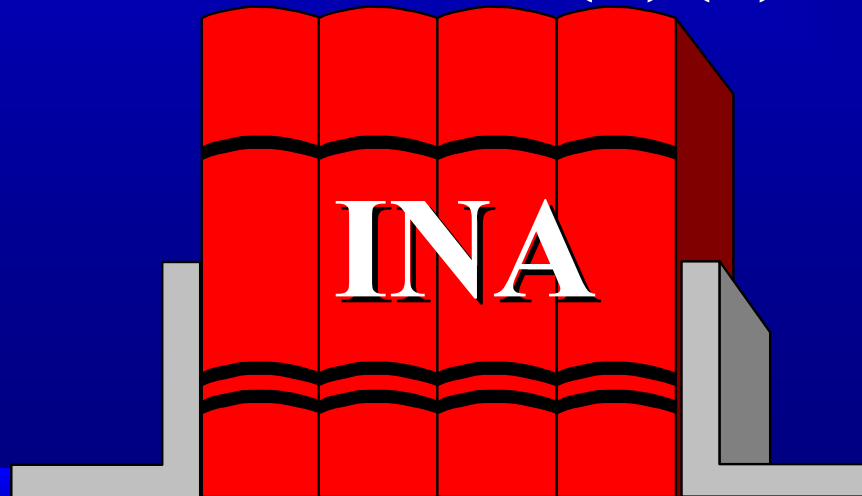
RELATED
STATUTES IN ORPHAN
CASES.



MUST Understand Following Terms Per **INA**:

CHILD Sec 101(b)(1)

PARENT Sec 101(b)(2)



DEFINITION OF CHILD

Sec.101(b)(1)INA

- (A) In Wedlock** **(Formerly Legitimate)**
- (B) Step Child**
- (C) Legitimated**
- (D) Out Of Wedlock** **(Formerly Illegitimate)**
- (E) Adopted**
- (F) Orphan**



IN WEDLOCK
Sec 101(b)(1)(A)

**A child born to a married
couple**



Step Child
Sec 101(b)(1)(B)

**Child born in or out of
wedlock whose parent
marries before child's 18th
birthday**



LEGITIMATED **INA SEC.101(b)(1)(C)**

LEGITIMATED Under Law Of The
Child's/Father's Residence.

LEGITIMATION Takes Place Before
18th Birthday.

Child Must Be In Legal Custody Of
LEGITIMATING Parent At Time Of
LEGITIMATION.



OUT OF WEDLOCK

Sec101(b)(1)(D)INA

**(D) A Child Born Out Of Wedlock, By,
Through, Whom, Or On Whose Behalf A
Status, Privilege, Or Benefit Is Sought By
Virtue Of The Relationship Of The Child To
Its Natural Mother**

**OR
To Its Natural Father If The Father Has Or
Had A Bona Fide Parent-Child Relationship
With The Person.**



ADOPTED CHILD

SEC 101(b)(1)(E)

Child adopted while under 16/under 18 if sibling under 16

**Adoptive parent(s) has had legal custody
FOR TWO YEARS**

**Resided with adoptive parent(s) FOR
TWO YEARS**

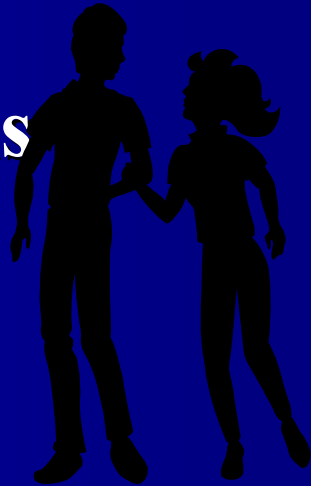
**Two Years legal custody and physical
residence with adoptive parent may be
counted prior to or after adoption.**



DEFINITION OF PARENT IN INA SEC101(b)(2)

WHO IS A PARENT is important to know when adjudicating orphan petitions

- Did the child have two parents?**
- Did the child acquire another parent through a step relationship or intervening adoption?**



When does a child have a father?

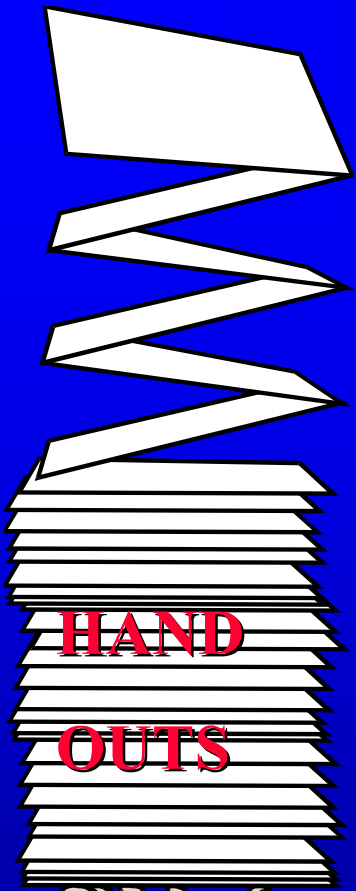
PARENT

Sec 101(b)(2) INA

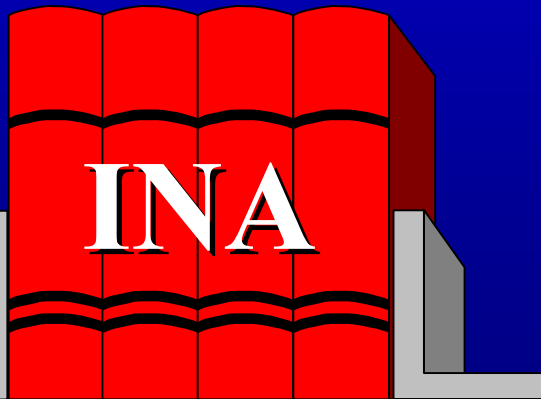
Refers to mother OR father only where relationship exists by reason in Sec. 101(b)(1) except that for Sec.101 (b)(1)(F)(*orphans*):
... in the case of child born out of wedlock and NOT legitimated , the term “parent” does NOT include the natural father if the father has disappeared, abandoned, deserted child or in writing, irrevocably released child for emigration & adoption.



IN CONCLUSION...



HAND
OUTS



Use The TOOLS
Available:

- LAW
- REGULATIONS
- HANDOUTS

BE CORRECT...

BE CONFIDENT...

BE COMPETENT...



QUESTIONS

COMMENTS

